IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No.3302 of 2006
to
FIRST APPEAL No.3311 of 2006

For Approval and Signature:

HON'BLE MR.JUSTICE J.M.PANCHAL

HON'BLE SMT.JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? No

2 To be referred to the Reporter or not ? No

3 Whether their Lordships wish to see the fair copy of the judgment ? No

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? No

5 Whether it is to be circulated to the civil judge ? No

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SPL.LAQ OFFICER - Appellant(s)
Versus
RATANSINH MADHUSINH & 1 - Defendant(s)

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Appearance :
MR LR PUJARI, ASSTT. GOVERNMENT PLEADER for Appellant
MR GM AMIN for Respondent(s)-Claimant(s) in First Appeals No.3302, 3304 to 3311/06
MR MM SAIYED for Respondent(s)-Claimant(s) in First Appeal No.3303/06

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CORAM : HON'BLE MR.JUSTICE J.M.PANCHAL
and
HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 10/10/2006

ORAL JUDGMENT (Per : HON'BLE MR.JUSTICE J.M.PANCHAL)

1. Admitted. Mr.M.M.Saiyed, learned advocate, waives service of notice on behalf of the claimant/ claimants in First Appeal No.3303 of 2006 whereas Mr.G.M.Amin, learned advocate,waives service of notice on behalf of the claimant/ claimants in First Appeal No.3302/06 with First Appeals No.3304/06 to 3311/06. Mr.L.R.Pujari, learned Assistant Government Pleader, states at the Bar that the interest of the appellant and that of the respondent No.2, i.e. the Executive Engineer, Narmada Yojna, Division-4, Gandhinagar, is identical and not in conflict at all. In view of the statement made at the Bar by the learned Assistant Government Pleader, this Court is of the opinion that it is not necessary for the appellant to effect service of notice of admission of these Appeals upon the respondent No.2. Having regard to the facts of the case, the Appeals are taken up

for final disposal today.

2. By filing these Appeals under Section 54 of the Land Acquisition Act, 1894 (“the Act” for short) read with Section 96 of the Code of Civil Procedure, 1908, the appellant, i.e. the Special Land Acquisition Officer, Narmada Project, Unit No.3, Ahmedabad, has challenged the legality of common judgment and award dated September 10, 2004, rendered by the learned Extra Assistant Judge and Special Judge (LAR), Ahmedabad (R) at Navrangpura, in Land Acquisition Case Nos.185/01 to 197/01 by which the claimants are awarded additional compensation at the rate of Rs.67/- per sq.mt. over and above the compensation awarded to them at them at the rate of Rs.6/- per sq.mt. by the Special Land Acquisition Officer vide his award dated December 29, 2000, for their acquired lands.

3. The State Government received a proposal from the Executive Engineer, Narmada Project, Division No.4, Gandhinagar, to acquire the

lands of village Kadadara, Taluka: Dehgam, District: Ahmedabad, for the public purpose of Narmada Canal Project. On consideration of the said proposal, the State Government was satisfied that the agricultural lands of village Kadadara were likely to be needed for the said public purpose. Therefore, a notification under Section 4(1) of the Act was issued which was published in the official gazette on April 13, 1999. The land owners were thereafter served with notices under Section 4 of the Act. They opposed the proposed acquisition. After considering their objections, a report was forwarded by the Special Land Acquisition Officer to the State Government as contemplated by Section 5A(2) of the Act. On consideration of the said report, the State Government was satisfied that the agricultural lands of village Kadadara specified in the notification published under Section 4(1) of the Act were needed for the public purpose of construction Narmada Canal Project. Therefore, a

declaration under Section 6 of the Act was made which was published in the official gazette on September 29, 1999. The interested persons were thereafter served with notices under Section 9 of the Act for determination of compensation payable to them. The claimants appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs.100/- per sq.mt. However, having regard to the materials placed before him, the Special Land Acquisition Officer, by his award dated December 29, 2000, offered compensation to the claimants at the rate of Rs.6/- per sq.mt. The claimants were of the opinion that the offer of compensation made by the Special Land Acquisition Officer was totally inadequate. Therefore, they required the Special Land Acquisition Officer to refer the matter to the Court for the purpose of determination of just amount of compensation payable to them. Accordingly References were made to the District Court (R), Ahmedabad, which were registered as Land Acquisition

Case Nos.185/2001 to 197/2001.

4. On behalf of the claimants, witness Manubhai Galabji Bihola was examined at Ex.28. He claimed before the Reference Court that the village was fully developed having facilities like water, Wells, Pucca road, cooperative societies, post office, primary school, health centre, milk society, etc., and asserted that the claimants were entitled to additional compensation as claimed by them. During the course of recording of his testimony, the witness produced the previous award of the Reference Court relating to the lands of village Kadadara rendered in Land Acquisition Reference No.716/1991 at Ex.27. Though this witness was cross-examined by the learned District Government Pleader on behalf of the Special Land Acquisition Officer, i.e. the appellant, nothing could be elicited to doubt his assertion that the previous award of the Reference Court relating to the lands of this very village was not a relevant piece

of evidence. It may be mentioned that no witness was examined either by the appellant or by the acquiring body nor any documents were produced by any of them for consideration of the Reference Court.

5. On the basis of evidence led by the witness for the claimants and the previous award of the Reference Court relating to the lands of this very village, the Reference Court in the instant case was of the view that the market value of the lands acquired in the instant case was Rs.73/- per sq.mt. Under the circumstances, the Reference Court has awarded additional compensation of Rs.67/- per sq.mt. by the impugned award giving rise to the abovenumbered Appeals.

6. This Court has heard Mr.L.R.Pujari, learned Assistant Government Pleader for the appellant and Mr.M.M.Saiyed, learned Advocate for the claimant/claimants in First Appeal No.3303/06 as well as Mr.G.M.Amin, learned advocate for the claimant/ claimants in First

Appeal No.3302/06 with First Appeal Nos.3304/06 to 3311/06, at length and in great detail. This Court has also considered the documents produced by the learned counsels for the parties for perusal of the Court.

7. From the record of the case, it is evident that no sale-deed was produced on behalf of the claimants in support of their claim for enhanced compensation nor enhanced compensation was claimed on the basis of yield. The only piece of evidence which was relied upon by the claimants was the previous award of the Reference Court relating to the lands of this very village which was produced at Ex.27. Exhibit 27 indicates that various survey numbers of village Kadadara were acquired for the public purpose of construction of Narmada Canal pursuant to publication of notification issued under Section 4(1) of the Act in the official gazette on November 9, 1989. Therein, the

Special Land Acquisition Officer had offered compensation to the claimants at the rate of Rs.2.10 ps. per sq.mt. Feeling aggrieved, the claimants had sought References and the Reference Court in Land Acquisition Reference No.716/1991 awarded total compensation at the rate of Rs.37.60 ps. per sq.mt. It is well settled that the previous award of the Reference Court relating to the lands of a village which has attained finality can be taken into consideration as a good piece of evidence for the purpose of assessing the market value of the lands subsequently acquired from the same village. Under the circumstances, the Reference Court did not commit any error in placing reliance on the previous award of the Reference Court relating to the same village for the purpose of assessing the market value of the lands acquired in the instant case. The finding recorded by the learned Judge that there was a time gap of nine years and five months between the notification published under

Section 4(1) of the Act which was subject matter of consideration in Land Acquisition Reference No.716/1991 and publication of notification under Section 4(1) of the Act in the instant case is not in dispute. The Supreme Court has ruled in catena of reported decisions that when there is time gap between the notifications published under Section 4(1) of the Act, the claimant should be given reasonable rise in the price of lands at the rate of 10% p.a. On the basis of this principle, the Reference Court has held that the claimants would be entitled to compensation in all at the rate of Rs.73/- per sq.mt. and has therefore awarded additional compensation to the claimants at the rate of Rs.67/- per sq.mt. The learned Assistant Government Pleader could not point out to the Court that the calculation made by the Reference Court in the instant case regarding the rate of compensation payable to the claimants was erroneous in any manner. On re-appreciation of facts of the case, this

Court finds that correct findings of facts have been arrived at to which settled principles of law have been applied by the Reference Court. The learned Assistant Government Pleader has failed to persuade this Court to take a different view than the one which is taken by the Reference Court in the instant case. The result of the above discussion is that there is no merit in any of the Appeals filed by the appellant and therefore, the Appeals are liable to be dismissed.

8. For the foregoing reasons, all the Appeals fail and are dismissed. There shall be no orders as to costs. The Registry is directed to draw the decree in terms of this judgment as early as possible.

(J.M.Panchal, J.)

(Smt.Abhilasha Kumari, J.)

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